

Local 27, Sheet Metal Workers International Association, AFL-CIO and AeroSonics, Inc.

Local 27, Sheet Metal Workers International Association, AFL-CIO and Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company. Cases 4-CC-2047, 4-CC-2055, and 4-CE-103

June 21, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

On November 27, 1995, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent and the General Counsel both filed briefs opposing the other's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,¹ and conclusions, and to adopt the recommended Order as modified.²

As fully detailed in his decision, the judge found, and we agree, that the Respondent committed three violations of Section 8(b)(4)(B) and a violation of Section 8(e). The 8(e) violation is based on an award of

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In addition, the Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² The General Counsel has excepted to the judge's inadvertent failure to find an additional unlawful object with regard to two separate instances of conduct by the Respondent in violation of Sec. 8(b)(4)(B). Thus, the General Counsel contends that, in addition to the proscribed "cease doing business" object found with respect to the Respondent's unlawful pressure on the Thomas Company, Inc., concerning its business relationships with AeroSonics, Inc. and with T & A Metal Products, Inc., the evidence establishes that, as alleged in the complaint, the Respondent's conduct was also driven by an objective to force or require both AeroSonics and T & A to recognize or bargain with the Respondent or a sister Sheet Metal Workers local. Because the facts found by the judge establish that the Respondent's conduct in both instances had this more specific object in addition to the broader "cease doing business" object, we will modify the Order accordingly. See *Laborers Local 938 (Collins & Baumann Construction)*, 217 NLRB 896 fn. 1 (1975), enf'd. mem. 526 F.2d 1405 (5th Cir. 1976).

We will also modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

a local joint adjustment board (LJAB) pursuant to the Respondent's contractual grievances, and the Respondent's action to enforce the award in Federal district court. The Respondent's successful prosecution of its grievances was driven by its unlawful interpretation of a facially valid subcontracting clause in its collective-bargaining agreement with Charging Party Thomas Company, Inc., the Employer. The LJAB award, which adopted the Respondent's unlawful interpretation, provided the requisite "agreement" for an 8(e) violation. See, e.g., *Carpenters Local 745 (SC Pacific)*, 312 NLRB 903, 904 fn. 5 (1993), enf'd. mem. 73 F.3d 370 (9th Cir. 1995); and *Retail Clerks Union Local 770 (Hughes Markets)*, 218 NLRB 680, 683 fn. 11 (1975).³

With further regard to the 8(e) violation found by the judge, we agree with the General Counsel that there is no evidence on this record that unit employees have ever fabricated the custom kitchen equipment at issue; such work has always been prefabricated by other companies for installation by the Employer. Accordingly, the Respondent did not establish a valid work preservation claim to justify its interpretation of the subcontracting clause in the parties' agreement. See, e.g., *Service Employees Local 32B-32J (Nevins Realty)*, 313 NLRB 392 (1993), enf'd. in relevant part 68 F.3d 490 (D.C. Cir. 1995).⁴

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 27, Sheet Metal Workers International Association, AFL-CIO, Farmingdale, New Jersey, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

³ It is worthwhile to point out that, as a matter of law, *solely unilateral* conduct by a union, for example, a threat of picketing or the mere filing of a grievance, to enforce an unlawful interpretation of a facially lawful contract clause does not violate Sec. 8(e) because such conduct does not constitute an "agreement." See *Plumbers Local 539 (American Boiler Mfrs.)*, 154 NLRB 314, 316 fn. 7 (1965), vacated and remanded on other grounds 366 F.2d 823 (8th Cir. 1966); *Puget Sound District Council (U.S. Plywood)*, 153 NLRB 547 fn. 1 (1965); see also *Teamsters Local 89 (Robert E. McKee)*, 254 NLRB 783, 787 (1981), enf'd. 684 F.2d 359 (6th Cir. 1982). Unilateral conduct of this kind, however, may violate other provisions of the Act. See, e.g., *Elevator Constructors (Long Elevator)*, 289 NLRB 1095 (1988), enf'd. 902 F.2d 1297 (8th Cir. 1990) (8(b)(4)(A) violation found).

⁴ Member Cohen does not rely on *Nevins Realty*, supra. In that case, the Board dealt with the issue of whether the filing of a grievance violated Sec. 8(b)(4)(B). The Board found the violation, concluding that the grievance did not have a "colorable basis." The instant case deals with a clause which, as interpreted, violates Sec. 8(e). The 8(b)(4)(B) violation regarding the grievance-filing is based on the premise that the grievance sought an unlawful 8(e) interpretation. In Member Cohen's view, the violation is *not* premised on a conclusion that the grievance lacked a colorable basis.

1. Substitute the following for paragraphs 1(a) and (b).

“(a) Inducing or encouraging individuals employed by Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company, or by any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to install or otherwise handle or work on any goods, articles, or products, or to perform any services, where an object thereof is (a) to force or require Thomas Company, Inc., or any other person, to cease using, selling, handling, installing, transporting, or otherwise dealing in the products of AeroSonics, Inc., or to cease doing business with AeroSonics, Inc.; or (b) to force or require AeroSonics, Inc., or any other employer, to recognize or bargain with the Respondent or a sister Sheet Metal Workers local as the representative of its employees, unless such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

“(b) Threatening, coercing, or restraining Thomas Company, Inc., Thomas-United, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is (a) to force or require Thomas Company, Inc., Thomas-United, Inc., or any other person, to cease using, selling, handling, installing, transporting, or otherwise dealing in the products of AeroSonics, Inc. or of T & A Metal Products, Inc., or to cease doing business with AeroSonics, Inc. or T & A Metal Products, Inc.; or (b) to force or require AeroSonics, Inc., T & A Metal Products, Inc., or any other employer, to recognize or bargain with the Respondent or a sister Sheet Metal Workers local as the representative of its employees, unless such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.”

2. Substitute the following for paragraphs 2(c) and (e).

“(c) Within 14 days after service by the Region, post at its union office and other places where it customarily posts notices to members in New Jersey, copies of the attached notice marked “Appendix B.”¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

“(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that the Respondent has taken to comply.”

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX B

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT induce or encourage individuals employed by Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company, or by any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to install or otherwise handle or work on any goods, articles, or products, or to perform any services, where an object thereof is (a) to force or require Thomas Company, Inc., or any other person, to cease using, selling, handling, installing, transporting or otherwise dealing in the products of AeroSonics, Inc., or to cease doing business with AeroSonics, Inc.; or (b) to force or require AeroSonics, Inc., or any other employer, to recognize or bargain with us, or a sister local of the Sheet Metal Workers International Association, AFL-CIO as the representative of its employees, unless such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

WE WILL NOT threaten, coerce, or restrain Thomas Company, Inc., Thomas-United, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is (a) to force or require Thomas Company, Inc., Thomas-United, Inc., or any other person, to cease using, selling, handling, installing, transporting or otherwise dealing in the products of AeroSonics, Inc. or of T & A Metal Products, Inc., or to cease doing business with AeroSonics, Inc. or T & A Metal Products, Inc.; or (b) to force or require AeroSonics, Inc., T & A Metal Products, Inc., or any other employer, to recognize or bargain with us, or a sister local of the Sheet Metal Workers International Association, AFL-CIO as the representative of its employees, unless such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

WE WILL NOT pursue in any manner our December 1, 1994 grievances against Thomas Company, Inc., which allege that Thomas violated its current collective-bargaining agreement with us by subcontracting work to a nonunion fabricator, T & A Metal Products, Inc., or enter into any other agreement, express or im-

plied, whereby an employer agrees to cease and refrain from using, selling, handling, installing, transporting, or otherwise dealing in the products of any other employer, or from doing business with any other person in violation of Section 8(e) of the Act.

WE WILL notify the Local Joint Adjustment Board for the Sheet Metal Industry of Central and Southern New Jersey, in writing, that we have withdrawn our grievances filed on December 1, 1994, against Thomas Company, Inc., and WE WILL request, in writing, that the Joint Adjustment Board vacate its award on those grievances.

WE WILL seek dismissal of our action in the United States District Court, District of New Jersey, Trenton Vicinage, Civil Action No. 95CV1013 (SSB) seeking confirmation of the Joint Adjustment Board's award on our December 1, 1994 grievances against Thomas Company, Inc.

LOCAL 27, SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION, AFL-
CIO

Lea F. Alvo, Esq., for the General Counsel.

Robert F. O'Brien, Esq. (Tomar, Simonoff, Adourian, & O'Brien, P.C.), of Haddonfield, New Jersey, for the Respondent.

John H. Widman, Esq. (McAleese, McGoldrick & Susanin, P.C.), of King of Prussia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on July 31, 1995.¹ The charge in Case 4-CC-2047 was filed by AeroSonics, Inc. (AeroSonics) on June 24, 1994,² alleging that since on or about February 16, Local 27, Sheet Metal Workers International Association, AFL-CIO (Local 27) had violated Section 8(b)(4)(B) of the National Labor Relations Act (the Act). In an effort to dispose of Case 4-CC-2047, Local 27 and AeroSonics entered into an informal settlement agreement, which the Regional Director for Region 4 approved on August 30. Thereafter, on a charge, a first amended charge, and a second amended charge in Case 4-CC-2055, filed by Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company³ (Thomas) on October 26 and 28, and December 9, respectively, and on a charge in Case 4-CE-103, filed by Thomas on January 30, 1995, the Regional Director for Region 4 issued an order consolidating cases, consolidated complaint and notice of hearing on April 13, 1995. Next, on May 18, 1995, the Acting Regional Director for Region 4 issued an order revoking the informal

settlement and complaint and notice of hearing in Case 4-CC-2047. On the same date, the Acting Regional Director amended the consolidated complaint in Cases 4-CC-2055 and 4-CE-103. Finally, on the same date the Acting Regional Director issued his order consolidating cases in Cases 4-CC-2055, 4-CE-103, and 4-CC-2047.

The consolidated complaint in Cases 4-CC-2055 and 4-CE-103, as amended, alleges that Local 27 violated Section 8(b)(4)(ii)(B) of the Act by threatening Thomas that its members would no longer handle, accept, or install products manufactured by T & A Metal Products, Inc. (T & A), and by threatening to picket Thomas and Thomas-United Co. (Thomas-United), where an object was to force Thomas and Thomas-United to cease using products manufactured by T & A and to force or require T & A to recognize Local 27. The same consolidated complaint also alleges that Local 27 violated Section 8(b)(4)(ii)(B) and Section 8(e) of the Act by filing grievances based on a provision of a collective-bargaining agreement, and by seeking to enforce an arbitration award arising from those grievances, in a court proceeding.

The order revoking informal settlement agreement, complaint and notice of hearing issued in Case 4-CC-2047 asserts that Local 27 and AeroSonics entered into a settlement agreement which was approved on August 30, alleges that Local 27 violated the settlement agreement, and further alleges that since on or about February 16, Local 27 has violated Section 8(b)(4)(i) and (ii)(B) of the Act by ordering individuals employed by Thomas not to install products manufactured by AeroSonics, where an object is to force Thomas to cease using products manufactured by AeroSonics and to force or require AeroSonics to recognize Local 27.

In its timely filed answers, Local 27 denied committing any of the alleged unfair labor practices. Local 27 also challenged the Acting Regional Director's revocation of the settlement in Case 4-CA-2047. The General Counsel and Local 27, each, filed a timely posthearing brief.⁴ The Sheet Metal Workers International Association timely filed a letter stating its amicus position regarding the alleged violations in Cases 4-CC-2055 and 4-CE-103.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs and amicus letter, I make the following

FINDINGS OF FACT

I. JURISDICTION

AeroSonics, an Illinois corporation, with its principal place of business at California, Missouri, manufactures attenuators, louvers, and dampers for heating and air-conditioning systems. The complaint in Case 4-CC-2047 alleges, and Local 27 admits, that during the past year, AeroSonics, in conducting its manufacturing, purchased and received at its California, Missouri plant materials and supplies valued in excess of \$50,000 directly from points outside the State of Missouri.

Thomas, a New Jersey corporation, with its principal place of business at Atlantic City, New Jersey, installs roofing and sheet metal products, including food service equipment, for various Atlantic City, New Jersey enterprises. The consoli-

¹Tr. 185 of the hearing held in these cases is corrected to reflect that the record was closed at 5:30 p.m., on July 31, 1995.

²All dates are in 1994 unless otherwise indicated.

³The name of the Charging Party in Cases 4-CC-2055 and 4-CE-103 appears as corrected on the General Counsel's posthearing motion.

⁴The General Counsel's motion to correct the transcript of the hearing in these cases is granted. Certain errors in the transcript have been noted and corrected. [App. A omitted from publication.]

dated complaint in Cases 4–CC–2055 and 4–CE–103 alleges, Local 27 admits, and I find, that during the past year, in conducting its installation of roofing and sheet metal products, Thomas purchased and received materials and supplies valued in excess of \$50,000 directly from points outside the State of New Jersey.

T & A, a New Jersey corporation, with its principal place of business at Deptford, New Jersey, fabricates kitchen equipment and supplies. The consolidated complaint in Cases 4–CC–2055 and 4–CE–103 alleges, Local 27 and the General Counsel stipulated, and I find, that during the past year, in the course of fabricating kitchen equipment and supplies, T & A purchased and received materials and supplies valued in excess of \$50,000 directly from points outside the State of New Jersey.

Local 27 admits, and I find, that AeroSonics, Thomas, and T & A, respectively, are, and have been at all times material to these cases, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 27 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*⁵

1. The Atlantic City High School project

Thomas, a commercial and industrial roofing and sheet metal contractor, employs from 50 to 70 employees of whom 20 to 25 are sheet metal workers whom Local 27 and its predecessor, Local 43, have represented for purposes of collective bargaining for 75 years. Thomas was signatory to a collective-bargaining agreement between Local 27 and the Sheet Metal Contractors' Association of Central and Southern New Jersey and Associated Roofers, from June 1, 1991, until May 31. Thomas is also signatory to the current contract between the same association and Local 27, effective from June 1 until May 31, 1997.

In March 1993, Thomas entered into a subcontract with a mechanical contractor, Thomas H. Barhan Company, to perform HVAC duct work at the Atlantic City High School. Among the items Thomas provided under its subcontract, were sound attenuators, which act as mufflers to deaden the noise of a ventilation system.

Later in 1993, Thomas ordered 34 attenuators and 4 diffuser cones from Del Ren Associates, an independent manufacturer's representative for AeroSonics. On January 21, AeroSonics delivered the attenuators and diffuser cones to Thomas. During early February, Thomas' sheet metal employees installed approximately 70 percent of the attenuators, all of which had blue labels affixed, showing that employees represented by a Teamsters local had manufactured them.

AeroSonics manufactured the attenuators at its California, Missouri plant. Its employees are covered by a collective-bargaining agreement with Teamsters Local Union No. 833 affiliated with the International Brotherhood of Teamsters, effective from July 23, 1993, until July 23, 1996. At no time material to Case 4–CC–2047, has Local 27 been certified

pursuant to Section 9 of the Act as the exclusive collective-bargaining representative of AeroSonics' employees.

In early February, Local 27's business representative, Peter A. Fagan, advised Thomas' vice president and secretary, George J. Thomas, that Local 27 would no longer permit Thomas to install the sound attenuators on the Atlantic City High School project. Fagan explained that as the sound attenuators did not bear a union label showing that members of a sheet metal local had fabricated them, he would not permit Thomas' sheet metal workers to install them.

Vice President Thomas asked for further explanation for Local 27's refusal to allow Thomas to complete its work at the Atlantic City High School project. He also asserted that the subcontract required Thomas to complete this installation within 10 days and that failure to do so could subject his firm to liability for daily damages. Fagan replied that he had instructed Thomas' sheet metal employees at the high school project not to install the sound attenuators and that they had to be refabricated by "a recognized sheet metal organization."

In further conversations with Vice President Thomas, in early February, Fagan remained firm in his refusal to allow Thomas' sheet metal employees to install AeroSonics product on the Atlantic City High School project. Fagan advised Vice President Thomas to write a letter to AeroSonics, with a copy to Fagan, insisting that the sound attenuators be made with a sheet metal union label on them. Fagan suggested that the letter be sent by regular mail and by telefax.

On February 16, Thomas mailed and telefaxed the following letter to AeroSonics, with a copy to Fagan:

Please be informed that sale of your product line within the limits of Local Union #27 will be prohibited until such time as a written agreement with SMWIA National Office is received by our firm.

It is essential that you provide a written union agreement with SMWIA in order to comply with the terms and provisions of our collective bargaining agreement.

Please furnish this office with a copy of said agreement at your earliest convenience.

By letter to Vice President Thomas, dated February 27, Local 27's president and business manager, Thomas B. Stapleton, acknowledged receipt of a copy of Thomas' letter of February 16, and declared:

This Union appreciates your support of the product needing an SMWIA Yellow Label in order to be installed. By prohibiting the installation of a product without said label, helps the cause of all Sheet Metal Workers.

It is our position that the product currently stored on the jobsite be removed and returned to the supplier. If the supplier cannot replace with Yellow Label product, call Pete Fagan and he will research another source.⁶

By letter dated February 22, Vice President Thomas protested to Local 27's President Stapleton that article VIII, section 3, item 9 of the current collective-bargaining agreement

⁵Except as noted below, the relevant facts in these cases are not disputed.

⁶The yellow label referred to in Stapleton's letter is used on products manufactured by building trade employees represented by the Sheet Metal Workers Association.

covering Thomas' sheet metal employees, exempted sound attenuators from a prohibition against subcontracting for pre-fabrication of material to employers who pay less than the prevailing wage for comparable sheet metal fabrication, as established under the collective-bargaining agreement. The letter also stated that without compensation, Thomas would not comply with Local 27's demand to remove the installed sound attenuators from the high school project.

AeroSonics agreed to take back the 8 to 12 sound attenuators which Thomas had not installed. Thomas returned them to Del Ren. In June, AeroSonics purchased sound attenuator components from a manufacturer whose sheet metal employees were represented by the Sheet Metal Workers Association. AeroSonics shipped them to Del Ren's warehouse, where they were substituted for the components which had not been manufactured by sheet metal employees. In July and August, Thomas completed the installation of the sound attenuators at the Atlantic City High School. These attenuators had sheet metal product labels which Local 27 accepted.

2. The settlement

AeroSonics filed an unfair labor practice charge in Case 4-CC-2047 on June 20, alleging that Local 27's refusal to install the parts manufactured by AeroSonics violated Section 8(b)(4)(ii)(B) of the Act. Thereafter, on August 30, the Regional Director for Region 4 approved an informal settlement, which Local 27 and AeroSonics had executed on August 10 and 15, respectively. The settlement agreement, as approved, required Local 27 to post a notice to employees and members for 60-consecutive days from the date of the Regional Director's approval, and to comply with all the terms and provisions of that notice. The settlement agreement also stated that: "Contingent upon compliance with the terms and provisions [of the settlement agreement], no further action shall be taken in this case." In its notice to employees and members, Local 27 announced in pertinent part:

WE WILL NOT in any manner or by any means, threaten, coerce or restrain Thomas Company . . . where . . . an object thereof is to force or require Thomas Company . . . to cease using . . . handling, transporting, or otherwise dealing in the products of AeroSonics, Inc. or to cease doing business with Aerosonics, Inc. or to force or require AeroSonics, Inc. to recognize or bargain with . . . Local 27, or any other labor organization, as the representative of its employees unless Local 27, or such other labor organization has been certified . . . under . . . Section 9 of the . . . Act.

On April 13, 1995, the Regional Director issued the order consolidating cases, consolidated complaint and notice of hearing in Cases 4-CC-2055 and 4-CE-103, alleging that Local 27 had violated Section 8(b)(4)(ii)(B) and Section 8(e) of the Act. In an order dated May 18, 1995, the Acting Regional Director vacated and set aside the settlement agreement on the ground that Local 27's conduct, as alleged in the consolidated complaint, had violated that agreement.

3. The Atlantic City Casino jobs

In 1994, Thomas-United, Inc. (Thomas-United), a dealer in kitchen equipment located in Pleasantville, New Jersey, obtained five contracts for the installation of commercial kitchen equipment at Atlantic City casinos. From August 15 until January 21, 1995, Thomas-United issued four purchase orders for custom fabricated kitchen equipment to T & A Metal Products, Inc. (T & A), whose plant is located in Deptford, New Jersey. The purchase orders were for equipment which Thomas-United was under contract to install at Bally's Casino Service Bar, Bally's Grand Service Bar #2, Harrah's Service Bar #3, and at Bally's Sidewalk Cafe. Thomas-United also had a commercial kitchen installation job at the Sands Copa Pantry.

Thomas-United's corporate officers are also Thomas' corporate officers. Thomas-United employs a business manager, Lawrence Triboletti, who oversees its daily activity, an estimator, and, occasionally, a driver. However, Thomas-United employs neither sheet metal employee nor roofer employees. Since 1989, on 50 projects, Thomas-United has subcontracted the installation of the kitchen equipment, which it purchased from T & A and other suppliers, to Thomas.

As a matter of practice, Thomas' sheet metal employees receive the commercial kitchen equipment which Thomas-United has purchased and off-load it at jobsites. Further, Thomas' sheet metal employees set up the commercial kitchen equipment and install it.

Thomas-United subcontracted the five casino jobs to Thomas. The jobs were scheduled to start in early November 1994 and continue to completion through March 1995. T & A fabricated the custom kitchen equipment which Thomas-United had ordered. Thomas-United issued purchase orders to Thomas for the installation of the equipment at the five casinos. Thomas picked up the kitchen equipment at T & A's plant for installation at the casinos.

T & A's employees are not represented by any union. At no time material to these cases, has Local 27, or any other union, been certified pursuant to Section 9 of the Act as the exclusive collective-bargaining representative of T & A's employees.

In a telephone conversation with Vice President Thomas on October 24, Local 27's business representative, Peter A. Fagan, said that he had attempted to organize T & A and have it sign a contract with Local 27. Fagan also said that T & A's president, Nicholas D'Marco had refused to sign the agreement, but that Fagan intended to send an organizer from another sheet metal local to organize T & A.

In the same conversation, Fagan asked what Vice President Thomas intended to do about organizing T & A. Vice President Thomas denied responsibility for organizing T & A. Fagan then warned that Thomas' employees would no longer be able to receive, accept, install or incorporate T & A's products into the Atlantic City region. Fagan also remarked that he would not permit Thomas' employees to install products fabricated by T & A. Vice President Thomas reminded Fagan that Thomas had a history of installing T & A's products without a problem and asked why all of a sudden there was a problem. Fagan answered that this was the way things would be and Thomas would no longer be permitted to install T & A's fabricated products.

On November 1, Fagan approached Thomas' roofing project manager, Robert Law, at Thomas' storage trailer

which was behind the Thomas-United warehouse, and asked how many entrances there were to the Thomas-United facility. Law said there was the one they were standing in, which also provided access to Law's trailer. He also asked why Fagan was interested in that information. Fagan replied that in case he set up a picket line there, he wanted to have all the entrances covered. Fagan did not say who would do the picketing. Law expressed concern that such picketing would block access to his storage. Fagan said he would do what he had to do.

In early November, Local 27 sought a collective-bargaining agreement with Thomas-United. In a letter dated November 3, President Stapleton requested that Thomas-United sign a contract with Local 27 if it intended to perform work at the Atlantic City casinos. On November 7, Local 27's Peter Fagan telephoned Vice President Thomas and demanded that Thomas-United sign a contract with Local 27. Fagan also warned that he would not permit Thomas' employees to install T & A's products. Notwithstanding Fagan's warnings, Thomas' sheetmetal workers timely completed the five kitchen installations with T & A's products, without interruption.

On December 1, Local 27 filed five grievances against Thomas with the Local Joint Adjustment Board for the Sheet Metal Industry of Central and Southern New Jersey (the Joint Board). The Joint Board consists of six members, three representing Local 27 and three representing the employers in the sheet metal industry, who are covered by Local 27's current collective-bargaining agreement with the Sheet Metal Contractors Association of Central and Southern New Jersey. Article X of the current collective-bargaining agreement governs the grievance procedure which Local 27 invoked against Thomas.

Each grievance involved one of the five casino jobs in which Thomas had installed T & A products. Each grievance alleged, in pertinent part, that: "Thomas Company, a signatory employer, subcontracted work to a non-union fabricator." The grievances also alleged that Thomas "is an active owner of Thomas United, acting as a double-breasted contractor" and that Thomas violated the collective-bargaining agreement's grievance process. Each grievance listed four provisions of the collective-bargaining agreement which Thomas allegedly violated by misconduct. One of these provisions, article II, section 2 of the current collective-bargaining agreement between Local 27 and the Sheet Metal Association of Central and Southern New Jersey, to which Thomas is a signatory, states:

Subject to other applicable provisions of this Agreement, the Employer agrees that when subcontracting for prefabrication of materials covered herein, such prefabrication shall be subcontracted to fabricators who pay their employees engaged in such fabrication not less than the prevailing wage for comparable sheet metal

The grievances also alleged violations of article III, section 1, by employing other than Local 27's members to fabricate materials,⁷ article X, by failing to exercise the grievance procedure, and, instead, filing unfair labor practice charges with

⁷ A letter from the Joint Board to Local 27 and Thomas shows that on January 13, 1995, Local 27 withdrew the five grievances it had filed under art. III, sec. 1 of the current collective-bargaining agreement.

the National Labor Relations Board, and article XXVI, sections 1 and 2 of the addendum to the collective-bargaining agreement, by acting as a double breasted contractor, not notifying Local 27, and, acting fraudulently.

Attached to each of the five grievances was the following written statement signed by President Stapleton, describing Local 27's attempt to resolve each of them:

On Monday, October 24, 1994, Business Representative Pete Fagan, confronted George Thomas about rumors that Thomas Co. had acquired project at Bally's Park Place Casino, Atlantic City, N.J., and the Kitchen and/or Food Service Equipment was to be fabricated non-union by T & A Metal Products of Deptford, N.J.

Mr. Fagan indicated a potential violation of CBA, and that members of this Union should not be required to install non-union product.

Mr. Thomas rebuffed Mr. Fagan, and admitted to his ownership interest in Thomas-United, and admitted that fabrication would be performed by T & A, non-union.

Mr. Thomas subsequently filed an NLRB charge vs. Local Union 27.

On December 13, the Joint Board held its first hearing on Local 27's grievances. Vice President Thomas was present for Thomas. Business Representative Fagan was present for Local 27 and presented testimony in support of the grievances to the Joint Board. The Board included Local 27's President Stapleton, two of its business agents, and representatives of three sheet metal contractors. The minutes of the meeting show that Fagan's remarks to the Joint Board included the following:

What triggered the grievances was the Bally's Park Place job. . . . P. Fagan heard from other contractors that Thomas Co. had the job and will subcontract the equipment to a non-union company. P. Fagan stated, the job was given to Thomas-United Co., a non-union company owned by Thomas Company.

. . . .
T & A got the work, they are not signatory to the agreement, now or before, Thomas Co. should not get material from a non-union company, Thomas Co. should get material from a union company.

. . . .
[m]en were not given an opportunity to work at faz/bricating [sic] the equipment, men lost a lot of work, Thomas Co. could have used South Jersey Metal Co., a union fabricator.

Included with a letter dated December 20, to Arthur Brown, chairman of the Joint Board, Local 27 submitted a recommended resolution of the five grievances. Local 27's recommended remedy for the five grievances was as follows:

That Thomas Co. be fined \$500 per day for all days in which work takes place on the five projects in questions [sic], namely: Bally's Casino Service Bar, Sands Service Bar, Harrah's Phase III Casino Service Bar, Bally's Park Place Sidewalk Cafe, Bally's Grand Casino Expansion & Renovations, through completion of said projects.

And, that Thomas United [sic] becomes signatory to a full collective-bargaining [sic] agreement with Local 27 immediately, to insure that further work will be fabricated by a Union shop.

All work not yet completed can be contracted by Thomas United [sic] to a Union fabricator, therefore eliminating the penalty on incompleted projects.

The Joint Board convened on January 13, 1995, for further proceedings on Local 27's grievances against Thomas. Vice President Thomas, who had agreed to present evidence on Thomas' behalf, did not appear at this session. Nor did Thomas send anyone else to represent it. The Joint Board found that Thomas had violated article II, section 2, and article X of the collective-bargaining agreement, and article XXVI, sections 1 and 2 of the addendum to that agreement, and awarded \$50,000 in damages to Local 27.

On direct examination by Local 27, Joint Board Chairman Arthur Brown testified before me that he and his colleagues made their decision:

Based on our interpretation of the agreement that Mr. Thomas' company, George Thomas Roofing Company was in violation of the agreement because he was subcontracting work to contractors paying less than [sic] the prevailing wage rate and union conditions.

However, two factors caused me to reject Brown's testimony regarding the Joint Board's reason for deciding against Thomas.

The first was my impression that Brown was reluctant to provide his full recollection. Thus, on cross-examination, Chairman Brown conceded that there was no evidence in the record of the grievance proceedings on January 13, 1995, "regarding the rates, wage rates and benefits rate paid by T & A Metals." However, when pressed for the reason such evidence was absent, Brown first testified that the information was not in that record, because Thomas did not produce it. When counsel asked if any such evidence was presented at the January 13 hearing, Brown was evasive, answering that "Mr. Thomas didn't offer any rates being paid by his employees." Only after I asked if anyone else had offered such evidence, did Brown answer, "No."

The second was my discovery that contrary to Brown's testimony, the Joint Board's minutes of its December 13 hearing did not confirm his testimony regarding Fagan's remarks in support of the grievances. Specifically, Brown testified twice, on cross-examination, that at the December 13 hearing Fagan testified, "[T]hat the men were not being paid prevailing wage rates. I also noted that Brown had joined with the Joint Board's secretary and recording secretary in signing a declaration on the last page of the record of those proceedings attesting to their accuracy. Further, Brown testified that the record of that hearing was: 'As thorough as could be.'" He also testified that the record of the December 13 grievance hearing accurately reported Fagan's remarks. Yet, contrary to his testimony, that record does not include any statement by Fagan or anyone else about prevailing wage rates or any other information about the wages or fringe benefits enjoyed by T & A's employees. Indeed, there is nothing in either the January 13, 1995 transcript or the December 13 transcript to show that either Fagan or Local 27's representatives on the Joint Board said anything in the grievance

proceedings about T & A's adherence to prevailing wage rates.

Instead, the December 13 transcript shows that Local 27's principal concern was that T & A was not party to a collective-bargaining agreement with Local 27 or any other affiliate of the Sheet Metal Workers International Association. Fagan's remarks at the grievance hearing on that date reflect that concern.

On January 19, 1995, the Joint Board issued a written decision finding that Thomas had violated the collective-bargaining agreement and addendum as follows:

1. Article II, section 2, work subcontracted to a company not paying the prevailing wage.
2. Article X, by not following the grievance procedure as set forth in the Collective-Bargaining Agreement.
3. Article XXVII, Sections 1 and 2 of the Addendum to the S.F.U.A. (A-3-91) in that both Thomas Company Inc., a signatory company and Thomas-United Inc., a non-union company are subsidiaries of Thomas Management Company Inc. The officers of all three entities are the same individuals.

However, based on the violation of article II, section 2, the Joint Board awarded \$50,000 in damages to Local 27, to be paid in full within 30 days following the date of the decision.

In late January 1995, Local 27's Peter Fagan, in a phone conversation with Vice President Thomas, said he understood that Thomas-United had the contract for the Captain's Buffet, at the Showboat Hotel Casino, and sought verification. Vice President Thomas answered that he did not know. He advised Fagan to call Thomas-United's business manager, Larry Triboletti, who was responsible for, and administered, Thomas-United's contracts. Fagan warned that Local 27 members would not install T & A fabricated items on that project.

In February 1995, Fagan met Triboletti and asked him if Thomas-United had been awarded the Showboat job. Triboletti answered that he had a verbal commitment but no contract. Fagan then sought assurance that Triboletti would not use T & A Metal on that job. Triboletti answered that he had not made up his mind yet, and that depending on the delivery date and the price, he would make up his mind later. Fagan said he would talk to Stapleton about that decision.

Local 27's employees timely completed installation of T & A products at the five projects covered by the grievances. However, on or about March 2, 1995, Local 27 filed, and has since maintained, a civil action under Section 301 of the Act, against Thomas, in the United States District Court, District of New Jersey, Trenton Vicinage, to enforce the Joint Board's award of \$50,000 as damages based on the violation of article II, section 2 of the current collective-bargaining agreement between the parties. Thomas has timely filed its answer and counterclaim under Section 303(a) of the Act in the court action. This civil action is pending before U.S. District Court Judge Stanley Brottmann.

B. Analysis and Conclusions

1. Violations of Section 8(b)(4)(i) and (ii)(B)

Section 8(b)(4) of the Act makes it unlawful for a union—

(i) to engage in or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, material or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an objective thereof is—

. . . .
(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person

The quoted provisions reflect the “dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own.” *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951). Accord: *NLRB v. Longshoremen ILA Local 1291*, 332 F.2d 559 (3d Cir. 1964).

There are two prerequisites for the finding of an 8(b)(4)(ii)(B) violation: (1) that a labor organization induce or encourage any individual employed by any person to refuse to handle goods; and (2) that an object of this conduct be to force or require one person to cease doing business with another person. *Longshoremen ILA v. Allied International*, 456 U.S. 212, 222 (1982). The two prerequisites for the finding of an 8(b)(4)(ii)(B) violation are: (1) that a labor organization “threaten, coerce or restrain any person”; and (2) that an object of this conduct be to force one person to cease doing business with another person. E.g., *Painters Local 36 (Stewart Construction)*, 278 NLRB 1012, 1015 (1986). Accord: *Limbach Co. v. Sheet Metal Workers*, 949 F.2d 1241, 1249–1250 (3d Cir. 1991).

The General Counsel contends that Local 27 violated Section 8(b)(4)(i) and (ii)(B), by inducing the neutral Thomas’ employees to refrain from installing AeroSonics’ sound attenuators at the Atlantic City High School project and by threatening and coercing Thomas to induce Thomas to cease using AeroSonics’ sound attenuators. Local 27 denied the General Counsel’s allegations. I find that the record evidence amply sustains the General Counsel’s position regarding Local 27’s conduct with regard to the sound attenuators.

The record here, shows the necessary prerequisites for finding violations of Section 8(b)(4)(i) and (ii)(B) of the Act. Thomas was a neutral employer in this context. Local 27’s dispute was with AeroSonics, whose attenuators showed that a Sheet Metal Workers International Association local (SMWIA) did not represent its employees. Local 27’s Peter Fagan made that clear at the outset, in early February. Fagan warned Thomas that Local 27, which represented Thomas’ sheet metal employees, would not permit them to install the AeroSonics’ sound attenuators. The sole reason was the attenuators lacked sheet metal union labels. In the same conversation, Fagan admitted that he had instructed Thomas’ sheet metal employees to refrain from installing the attenu-

ators, and insisted that his instruction would stand until the products had been refabricated by “a recognized sheet metal organization.” Fagan’s remarks plainly show that Local 27 wanted Thomas to cease doing business with AeroSonics in an effort to pressure the supplier into recognizing a SMWIA local as the collective-bargaining representative of its employees.

Fagan’s insistence found echo in President Stapleton’s letter of February 27 to Thomas, on behalf of Local 27. That letter, in response to Thomas’ capitulation to Fagan’s threat, expressed Local 27’s appreciation for Thomas’ “support of the product needing an SMWIA Yellow Label in order to be installed.” Also, in the same letter, Stapleton showed Local 27’s unlawful object when he declared:

It is our position that the product currently stored on the jobsite be removed and returned to the supplier. If the supplier cannot replace with Yellow Label product, call Pete Fagan and he will research another source.

In sum, I find that, within the meaning of Section 8(b)(4), Local 27 has engaged in, and induced and encouraged individuals employed by Thomas to engage in a refusal in the course of their employment by Thomas to use or otherwise handle sound attenuators manufactured by AeroSonics. Further, Local 27 has threatened, coerced, and restrained Thomas by warning that it would no longer permit Thomas’ employees to install the sound attenuators supplied by AeroSonics to the Atlantic City High School job. An object of Local 27’s conduct, with respect to the sound attenuators, was to force or require Thomas to cease using, handling, or otherwise dealing in the sound attenuators of, and to cease doing business with, AeroSonics, all in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. *Laborers Local 464 (Lycon, Inc.)*, 304 NLRB 544, 553 (1991).

I also find merit in the General Counsel’s position that Local 27 further violated the Act when Fagan warned Thomas and Thomas-United that Local 27 would not permit Thomas’ sheet metal employees to install T & A’s equipment on the Atlantic City jobs. Local 27 was anxious to organize T & A’s employees and obtain T & A’s signature on a collective-bargaining agreement. Here again, both Thomas-United and Thomas were neutral parties not involved in Local 27’s problem with T & A. Here again, Fagan’s remarks support the General Counsel’s allegations.

Fagan’s remarks to George Thomas on October 24 show that T & A had rebuffed Local 27’s effort to organize its employees and obtain its signature on a collective-agreement. When Fagan asked George Thomas for help in these endeavors, Thomas declined to do so. Fagan responded to George Thomas with the warning that Thomas’ employees would no longer be able to receive, accept, install, or incorporate T & A’s products into the Atlantic City region. Fagan also warned that he would not permit Thomas’ sheet metal employees to install, T & A-fabricated products.

Fagan added to the pressure on Thomas, 8 days later, and also threatened Thomas-United, when he conversed with Thomas’ roofing project manager, Robert Law, near Thomas’ storage trailer and the Thomas-United facility, Fagan asked Law about the number of entrances to the Thomas-United facility. Law answered and asked why Fagan was interested in that information. Fagan said that in case he set up a picket

line there, he wanted to cover all the entrances. Law expressed concern about blockage of the storage trailer. Fagan was indifferent to Law's fear, saying that he would do what he had to do. In light of Fagan's remarks to George Thomas on October 24, I find Fagan's subsequent warning about a picket line was part of Local 27's attempt to press Thomas-United and Thomas to reject T & A's products.

Finally, in late January 1995, Local 27's Fagan, in a phone conversation, put further pressure on Thomas and Thomas-United to reject T & A's products. On that occasion, Fagan, asked Vice President Thomas if Thomas-United had a contract to install equipment for a buffet at the Showboat Hotel Casino. Vice President did not know and suggested that Fagan call Larry Triboletti of Thomas-United. Fagan accepted the answer but warned that Local 27 members would not install T & A fabricated items on that job.

I find that an object of the threats by Local 27 regarding the installation of T & A products was to cause Thomas, and Thomas-United, both neutral employers, to cease doing business with T & A. Accordingly, I further find that by those threats, Local 27 violated Section 8(b)(4)(ii)(B) of the Act. *Operating Engineers Local 12 (Wesley Forsythe)*, 180 NLRB 293, 296 (1969).

The General Counsel alleges that Local 27 violated Section 8(e) of the Act by filing the five grievances on December 1, and by pressing a suit in Federal court to enforce the Joint Board's award of damages based on Local 27's interpretation and enforcement of article II, section 2 of the current collective-bargaining agreement. According to the General Counsel, Local 27 was applying that clause to force Thomas to cease doing business with T & A because T & A is nonunion. Local 27 argues that it did not violate Section 8(e) of the Act, because it was enforcing article II, section 2, against Thomas for subcontracting work to an employer who failed to pay prevailing wages in violation of that agreement. I find from the record evidence recited above, that Local 27's efforts to enforce article II, section 2, against Thomas had an unlawful secondary purpose.

Section 8(e) of the Act prohibits entry into "any contract or agreement, express or implied" whereby an employer agrees not to handle products of, or agrees to cease doing business with, any other person. As the Court declared in *National Woodwork Mfrs. Assn. v. NLRB*, 386 U.S. 612, 633-635 (1967), Section 8(e) was intended to supplement the existing prohibitions against secondary boycotts. It does not prohibit all union employer agreements which may have the incidental effect of a cessation of business with other employers. Instead, Congress intended that Section 8(e) of the Act would embody the same distinction between lawful "primary" and unlawful "secondary" boycott activity contained in Section 8(b)(4) of the Act. *Id.* at 637-638. Accord: *A. Duie Pyle, Inc. v. NLRB*, 383 F.2d 772, 775-776 (3d Cir. 1967), cert. denied 390 U.S. 905 (1968).

The Board has recognized that contract clauses which seek to limit subcontracting of bargaining unit work to employers who maintain prevailing wages are lawful, as they effect a primary objective, the preservation of bargaining unit work. *Teamsters (California Dump Truck Owners)*, 227 NLRB 269, 272 (1976). Accord: *A. Duie Pyle v. NLRB*, supra, 383 F.2d at 777.

In *Retail Clerks Local 1288 (Nickel's Pay-Less Stores)*, 163 NLRB 817, 819 (1967), the Board expressed the appli-

cable standard for determining whether contract clauses violate Section 8(e) of the Act, as follows:

[C]ontract provisions are secondary and unlawful if they are to have as their principal objective the regulation of the labor policies of other employers and not the protection of the unit. Typical of such proscribed provisions are those which limit subcontracting to employers who recognize the union or are signatory to a contract with it.

Accord *In re Bituminous Coal Wage Agreements*, 756 F.2d 284, 290 (3d Cir. 1985); and *Teamsters Local 957 (Northwood Stone)*, 298 NLRB 395, 398-399 (1990), enfd. 934 F.2d 732 (6th Cir. 1991).

The Board has also held that a union violates Section 8(e) of the Act, where it construes and seeks enforcement of a lawful collective-bargaining provision to accomplish an objective proscribed by Section 8(e). *Carpenters Local 745 (SC Pacific Corp.)*, 312 NLRB 903, 904 (1993); and *Bricklayers Local 2 (Johnson & Sons)*, 224 NLRB 1021, 1028 (1976), enfd. 562 F.2d 775 (D.C. Cir. 1977).

In the instant case, Local 27 and the Joint Board have construed article II, section 2, to require Thomas to cease doing business with T & A, and subcontract only with a fabricator who is party to a contract with a union, i.e., Local 27, for prefabrication of components for service bars and other food and beverage service facilities. Local 27 filed a grievance to enforce that interpretation and thereafter brought suit in a U.S. district court to enforce an arbitration award based on that same interpretation. I find that by submitting its grievance regarding Thomas' subcontracting to T & A and by seeking to enforce the award of the Joint Board in a court action, Local 27 has violated Sections 8(b)(4)(ii)(B) and 8(e) of the Act. *Elevator Constructors (Long Elevator)*, 289 NLRB 1095 fn. 2 and 1098 (1988), enfd. 902 F.2d 1297 (8th Cir. 1990).⁸

Local 27 argues that the Regional Director erred in setting aside the settlement agreement in Case 4-CC-2047, because Local 27 had fully complied with it. However, it is well settled that a settlement agreement may be set aside and unfair labor practices found based on presettlement conduct if postsettlement unfair labor practices are committed. E.g., *Outboard Marine Corp.*, 307 NLRB 1333 (1992). Here, I have found that Local 27 engaged in postsettlement unfair labor practices. Therefore, I further find that the Regional Director properly set aside the settlement agreement in Case 4-CC-2047.

⁸In *Longshoremen ILWU Local 13 (Egg City)*, 295 NLRB 704, 705 (1989), the Board expressly reaffirmed its view that "there are circumstances under which the Board will find a violation of Section 8(e) by virtue of an arbitrator's award issued within the 10(b) period, even if the collective-bargaining agreement was not unlawful on its face." However, the Board found no 8(e) violation in *Egg City* because the collective-bargaining agreement under review expressly barred the arbitrator's unlawful interpretation. Here, the collective-bargaining agreement did not preclude the Joint Board's unlawful construction of art. II, sec. 2 of the current collective-bargaining agreement to which Local 27 and Thomas are parties.

CONCLUSIONS OF LAW

1. AeroSonics, Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company, and T & A Metal Products, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 27, Sheet Metal Workers International Association, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By inducing and encouraging employees of Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company to engage in refusals in the course of their employment by Thomas to install or otherwise handle products manufactured by AeroSonics, and by threatening, coercing, and restraining Thomas, and Thomas-United with an object of forcing or requiring Thomas and Thomas-United to cease doing business with AeroSonics, Local 27 engaged in unfair labor practices affecting commerce in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. By threatening Thomas and Thomas-United with picketing and warnings that its members would no longer handle, accept, or install products manufactured by T & A Metal Products, Inc., Local 27 threatened, coerced, and restrained Thomas and Thomas-United with an object of forcing or requiring Thomas and Thomas-United to cease doing business with T & A, in violation of Section 8(b)(4)(ii)(B) of the Act.

5. By filing grievances on December 1, 1994, to enforce article II, section 2 of the current collective-bargaining agreement against Thomas with the Local Joint Adjustment Board of the Sheet Metal Industry of Central and Southern New Jersey, and by filing and maintaining a civil action in the United States District Court for the District of the New Jersey to enforce an award on those grievances by the Joint Adjustment Board, Local 27 threatened, coerced, and restrained Thomas with an object of forcing or requiring Thomas to cease doing business with T & A in violation of Section 8(b)(4)(ii)(B) of the Act.

6. By filing grievances on December 1, 1994, to enforce article II, section 2 of the current collective-bargaining agreement against Thomas with the Local Joint Adjustment Board and by filing and maintaining a civil action in the United States District Court for the District of New Jersey to enforce an award on those grievances by the Local Joint Adjustment Board, Local 27 entered into an agreement in violation of Section 8(e) of the Act.

REMEDY

Having found that Local 27 has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Local 27 violated the Act by filing grievances and by filing and maintaining a civil action in Federal district court to enforce the Joint Adjustment Board's award, I shall recommend that Local 27 be ordered to notify the Joint Adjustment Board, in writing, that it has withdrawn its grievances filed on December 1, 1994, against Thomas, and to request, in writing, that the Joint Adjustment Board vacate its award on those grievances. As the object of Local 27's grievances was unlawful, I shall further recommend that Local 27 be required to seek dismissal of its action in Fed-

eral district court seeking confirmation of the Joint Adjustment Board's award on its grievances against Thomas.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Local 27, Sheet Metal Workers International Association, AFL-CIO, Farmingdale, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging individuals employed by Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company, or by any other persons engaged in commerce or in an industry affecting commerce to engage in a strike or refusal in the course of their employment to install or otherwise handle or work on goods, articles, or products or refuse to perform services, where an object thereof is to require Thomas Company, Inc., or any other person, to cease using, selling, handling, installing, transporting, or otherwise dealing in the products of AeroSonics, or to cease doing business with AeroSonics.

(b) Threatening, coercing, and restraining Thomas Company, Inc., Thomas-United, Inc., or any other persons engaged in commerce or in an industry affecting commerce, when an object is to require Thomas Company, Inc., Thomas-United, Inc., or any other person to cease using, selling, handling, installing, transporting, or otherwise dealing in the products of AeroSonics, or of T & A Metal Products, Inc.

(c) Pursuing in any manner its December 1, 1994 grievances against Thomas Company, Inc., which allege that Thomas violated its current collective-bargaining agreement with Local 27 by subcontracting work to a nonunion fabricator, T & A Metal Products, Inc., or entering into any other agreement, express or implied, whereby an employer agrees to cease and refrain from using, selling, handling, installing, transporting, or otherwise dealing in the products of any other employer or from doing business with any other person in violation of Section 8(e) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Local Joint Adjustment Board for the Sheet Metal Industry of Central NS Southern New Jersey, in writing, that it has withdrawn its grievances filed on December 1, 1994, against Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company, and to request, in writing, that the Joint Adjustment Board vacate its award on those grievances.

(b) Seek dismissal of its action in the United States District Court, District of New Jersey, Trenton Vicinage, Civil Action No. 95CV1013 (SSB) seeking confirmation of the Joint Adjustment Board's award on its December 1, 1994 grievances against Thomas Company, Inc.

(c) Post at its union office and other places copies of the attached notice marked "Appendix B."¹⁰ Copies of the no-

⁹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the

Continued

tice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Thomas Company, Inc., d/b/a Thomas Roofing and Sheet Metal Company, and Thomas-United, Inc., if willing, at all places where notices to employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.